

# HORIZONS



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## 地產代理被判入獄— 對所有參與一手住宅物業銷售的 持牌人的警號

Estate agent sentenced to jail — a warning to all licensees who participate in first-hand sale of residential properties



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整個地產代理行業必須確保自己能做到「5A代理」的標準,只有這樣,我們才能重建消費者的信任,提高行業整體的聲譽。

The entire trade must ensure that they can live up to the "5A agent" standards and only by doing so can we rebuild the trust of consumers and enhance the overall reputation of the industry.

## 建立良好的業界形象需要共同努力

## A good trade reputation requires concerted effort

期,因為一些備受廣泛報道、涉及地產代理違法的負面新聞,令地產代理行業的專業形象面對挑戰。雖然這些只是個別事件,但行業形象無可避免地已在一定程度上受損。

其中一宗個案中,一名地產代理因違反《一 手住宅物業銷售條例》,在銷售一手住宅物 業過程中發布虛假或具有誤導性物業資料而 被判入獄。另一宗個案中,則有一名地產代 理因違反《防止賄賂條例》而被判入獄。此 外,還有傳媒報道指一名地產代理涉及一宗 住宅物業的嚴重違建工程。

在這些負面新聞下,地產代理監管局要提升 地產代理的形象實在不容易,但我們仍然會 竭盡所能,繼續致力推廣。例如,我們在 YouTube上推出了五段動畫短片,以推廣 「5A代理」的概念。然而,要改善和維繫 地產代理的專業形象,需要整個行業通力合 作。對於地產代理所提供的服務水平,現今 消費者有愈來愈高的期望,僱主和公司責無 旁貸,有責任教導員工時刻保持專業,並應 實施嚴格的監察制度,使可以及早發現任何 不當行為。

已發生的既成事實,涉及地產代理的負面新聞報道,無疑損害了整個行業的形象。我們既不應讓一小撮害群之馬進一步損害行業聲譽,持牌人也應著眼產生問題的根源並加強自律。整個地產代理行業必須確保自己能做到「5A代理」的標準,只有這樣,我們才能重建消費者的信任,提高行業整體的聲譽。

The professional image of estate agents has recently faced challenges due to some widely reported negative news concerning estate agents breaching the law. Though these were isolated incidents, the trade's image was inevitably damaged to certain extent.

In one of these cases, an estate agent was sentenced to imprisonment for contravening the Residential Properties (First-hand Sales) Ordinance by disseminating false or misleading property information during the sale of a first-hand residential property. In another case, an estate agent was sentenced to imprisonment for contravening the Prevention of Bribery Ordinance. In addition, there were media reports suggesting that an estate agent was involved in serious unauthorised building works of a residential property.

Amid such negative publicity, it is definitely difficult for the Estate Agents Authority to improve the image of estate agents, but we shall still try our best and continue with our efforts to promote the trade's image. For example, we have produced five animated videos to promote the concept of the "5A agent" on YouTube. That said, improving and maintaining the professional image of estate agents requires the concerted effort of the entire industry. Consumers nowadays have everrising expectations of the service standards of estate agents. Employers and companies are obliged to educate their staff to act professionally at all times and to implement a robust monitoring system to detect any malpractice early.

What has happened is a fait accompli, the negative news reports concerning estate agents have undoubtedly harmed the image of the entire trade. Rather than allowing a few black sheeps to further tarnish the reputation of the industry, licensees should address the root causes that led to such failings and strengthen their self-discipline. The entire trade must ensure that they can live up to the "5A agent" standards and only by doing so can we rebuild the trust of consumers and enhance the overall reputation of the industry.

## 地產代理被判入獄一對所有參與 一手住宅物業銷售的持牌人的警號

Estate agent sentenced to jail – a warning to all licensees who participate in first-hand sale of residential properties



最近一名地產代理因傳布一則相當可能會誘使另一人購買指明住宅物業的虛假或具有誤導性的資料,觸犯《一手住宅物業銷售條例》(「《條例》」)而被判處監禁。這宗個案是對地產代理行業一個衝擊和警號。因此,監管局希望再三向持牌人強調,在參與一手住宅物業銷售時應小心謹慎,避免作出失實陳述,否則有可能被判處監禁,並可能被監管局認為不是持牌的適當人選及被監管局處分。

An estate agent was recently sentenced to imprisonment for contravening the Residential Properties (First-hand Sales) Ordinance ("Ordinance") by disseminating a piece of information which was likely to induce another person to purchase a specified residential property and the information was false or misleading. This case was a shock and warning to the estate agency trade and therefore the EAA would like to reemphasise to all licensees that they should be prudent and avoid misrepresenting any facts when participating in the sale of first-hand residential properties, otherwise it could lead to imprisonment, and they might not be considered as fit and proper persons to hold their licence and be disciplined by the EAA.

為遵從良好的銷售作業方式,以防誤墮法網,在參與銷售一手住宅物業時,持牌人應熟悉《條例》及監管局發出的相關指引。本期《專業天地》將簡述有關一手住宅物業銷售的執業通告(編號13-04(CR))(「執業通告」)的重點,作為對持牌人的一個提醒。

#### 首次有地產代理因觸犯《條例》被判即時監禁

一名地產代理分別於2019年12月6日及8日, 傳布一則有關一個發展項目的指明住宅物業 的樓底高度的資料,該資料相當可能會誘使 另一人購買指明住宅物業,而該資料在某事 關重要的事實方面是屬虛假或具誤導性的, 而該代理知道此事或罔顧該資料是否如此, 因而違反《條例》第78條而被一手住宅物業 銷售監管局檢控。在2023年4月14日,該地產 代理在觀塘裁判法院被裁定違反《條例》, 兩項控罪各被判監禁兩個月,同期執行,即 時監禁。這是《條例》自2013年4月29日實施 以來,首次有地產代理被定罪。

#### 在銷售一手住宅物業時遵守所有相關指引

上述個案是對所有持牌人的嚴正提醒,持牌人在參與銷售一手住宅物業時必須遵從《條例》及所有相關指引。持牌人應緊記,違規的後果不但有可能被監管局紀律處分,並有可能鋃鐺入獄。

當《條例》在2013年生效時,監管局曾發出 執業通告,就進行一手住宅物業銷售活動及 提供物業資料制定操守指引。以下是有關執 業通告的重點內容,作為對持牌人的提醒。

當持牌人向準買家提供物業的相關資料,須 (a)以由賣方提供的售樓說明書及文件所載的 資料為準;及(b)採取一切合理步驟及盡一切 應盡的努力核實有關資料。持牌人不得作出 任何可能誤導準買家的陳述。

此外,持牌人須建議準買家在訂立任何買賣協議前查閱最新版本的售樓説明書、價單、

To comply with good practice and avoid inadvertently contravening the law, licensees should familiarise themselves with the Ordinance and the relevant guidelines when they participate in first-hand sale of residential properties. In this issue of *Horizons*, we will highlight the important points-to-note in the Practice Circular on first sales of residential properties (No. 13-04 (CR)) as a reminder to licensees.

## First estate agent sentenced to immediate imprisonment for contravening the Ordinance

On 6 and 8 December 2019, an estate agent disseminated a piece of information concerning the ceiling height of a specified residential property of a development that was likely to induce another person to purchase a specified residential property and the information was false or misleading as to a material fact and the estate agent knew that, or was reckless as to whether, such information was false or misleading as to the material fact. Hence, this contravened section 78 of the Ordinance. As a result, the estate agent was prosecuted by the Sales of First-hand Residential Properties Authority. On 14 April 2023, the estate agent was convicted at the Kwun Tong Magistrates' Courts and was sentenced to two months' immediate imprisonment for each offence, to be served concurrently. This is the first conviction of an estate agent since the Ordinance came into force on 29 April 2013.

#### Complying with all relevant guidelines when promoting firsthand residential properties

The above case serves as a stern reminder to all licensees that they must comply with the Ordinance and all relevant guidelines when promoting first-hand residential properties. Licensees should bear in mind that the outcome of any non-compliance might not only lead to disciplinary actions by the EAA but also imprisonment sentenced by the court.

When the Ordinance came into force in 2013, the EAA issued a Practice Circular (No. 13-04 (CR)) ("Circular") setting out guidelines on the conduct of promotional activities and the provision of property information for the first sale of residential properties. Here we will highlight some major points in the Circular to serve as a reminder to all licensees.

When providing information to prospective purchasers, licensees must do so: (a) only based on the latest information contained in the sales brochure and documents prepared and provided by the vendor; and (b) only after they have taken all reasonable steps and exercised all due diligence to verify the information. Licensees must not make any representation that may mislead prospective purchasers.

銷售安排及載有發展項目成交資料的紀錄冊 (因賣方可能就前述資料作出修改/更新)、 大廈公契(草擬本)及政府租契。持牌人須提 醒準買家留意售樓説明書內列明的單位實際尺 寸,而非倚賴從觀看示範單位所得的單位面積 的觀感。

地產代理公司亦須採取一切合理措施,確保 其員工熟悉有關發展項目的資料和所有相關 指引。在進行相關推廣活動前,地產代理公 司須提供或安排銷售前簡介會予將參與促銷 該發展項目推廣活動的員工,簡介會須包括 發展項目的資料,執業通告所載的指引,以 及由監管局不時發出的其他相關通告所載的 指引。只有已參加簡介會的持牌人方可從事 相關發展項目的推廣活動。

以上重點只是執業通告的部分內容,持牌人應 查閱監管局網站,閱讀執業通告的全文(規管 >執業通告)。

#### 成為「5A」代理

作為專業的地產代理,不單在銷售一手住宅物業時應保持謹慎,在處理所有物業交易時都同樣要時刻謹言慎行。持牌人應努力成為具備「三言兩語」特質(即「言出必行」、「言之有物」、「言而有信」、「與時並進」及「與客同行」)的「5A」代理。

要提升地產代理的專業水平及公眾形象,持牌人的努力不可缺少。一宗負面新聞,都可

能會嚴重損害行業聲 譽。因此,持牌人 時刻熟習所有相關的 知識及指引,緊記 守指引的重要性, 同努力為行業建立 面及專業的形象。 Furthermore, licensees must advise prospective purchasers to consult the latest version of the sales brochures, price list, sales arrangements and the register containing information of the transactions for a development (as the information therein may be revised/updated by the vendor), the (draft) deed of mutual covenant and Government Lease before they enter into any agreement for sale and purchase. Licensees must also remind prospective purchasers to pay attention to the dimensions of the units as stated in the sales brochure, and not to rely on their perception on the unit size formed from the viewing of show flats.

Estate agency companies must take all reasonable steps to ensure that their staff are familiar with the information about the development and all relevant guidelines. Before conducting any promotional activity, estate agency companies must provide or cause to be provided a pre-sale briefing to their staff to be involved in such activity and such briefing must include information about the development and also the guidelines set out in the Circular and other related circulars as may be issued by the EAA from time to time. Only licensees who have attended such pre-sale briefing(s) may participate in the promotional activities.

The above are only some important points of the Circular and licensees should read the full version of the Circular which is available at the EAA website (Compliance > Practice Circulars).

#### Be a "5A" agent

As a professional estate agent, not only when selling first-hand residential properties, licensees should always be prudent when handling all property transactions. Licensees should strive to become a "5A" agent with the attributes of "Adherence", "Ability", "Accountability", "Advancement" and "Affinity".

Enhancing the professionalism and public image of the estate agency trade requires the effort of licensees. One piece of negative news will

> greatly discredit the trade. Hence, licensees should always familiarise themselves with all the relevant knowledge and guidelines, be aware of the importance of compliance, and

> > make a concerted effort to establish a positive and professional image for the industry.



## 提醒分間單位業主客戶切勿濫收公用設施及服務費用

## Reminder to landlord clients of subdivided units not to overcharge charges for utilities and services

近,監管局與劏房居民關注組織代表 **上又**會面,了解有關組織對地產代理在處 理對分間單位(俗稱「劏房」)租賃時的意 見。

監管局希望提醒持牌人在處理劏房租賃時, 必須遵從監管局發出的相關指引。

其中,持牌人必須提醒客戶留意相關罪行及分攤款項,如業主要求租客繳付劏房的公用設施及服務款項,超過業主向租客提供的書面帳目中顯示經分攤的公用設施及服務款項,將屬違法。

監管局建議持牌人瀏覽監管局網站,閱讀有關執業通告(編號22-01 (CR)) (規管>執業通告)及相關宣傳單張,以進一步了解有關指引的重點。

此外,就有關分間單位的水費及水錶事宜,水務署已推出「分間單位安裝獨立水錶先導計劃」,以方便已為個別單位提供獨立供水系統的分間單位,安裝水務署的水錶。

為鼓勵更多分間單位業主參與上述計劃,水務署會豁免在該計劃下所安裝的每個獨立水錶的水費按金,亦會豁免提供水錶的費用。詳情請參閱水務署網站(www.wsd.gov.hk/tc/redir/pilotSchemeSDU)。



The EAA recently met with representatives of a concerned group about the tenancies of subdivided flats to understand their concerns regarding the practice of estate agents when handling tenancies of subdivided units ("SDUs").

As a reminder, the EAA would like to reiterate the importance of licensees following the relevant guidelines issued by the EAA.

Amongst which, licensees are required to draw the clients' attention that it would constitute an offence under the Ordinance if the landlord requires the tenant to pay for utility and service charges for the SDUs at a sum exceeding the apportioned amount as shown in the account in writing provided by the landlord to the tenant.

Licensees are strongly advised to visit the EAA website to read the relevant Practice Circular (No. 22-01 (CR) (Compliance>Practice Circular) and the relevant educational leaflet to better understand the key points of the guidelines.

In addition, concerning the issue of water charges and water meter in respect of SDUs, the Water Service Department ("WSD") has launched a Pilot Scheme for Installation of Separate Water Meter for Subdivided Units to facilitate installation of the WSD water meters for SDUs with separate plumbing systems for individual units.

To encourage SDU landlords' participation in the above scheme, the WSD would waive the water fee deposit and the charge for providing a meter for each separate water meter installed under the scheme. For details, please refer to the WSD website (www.wsd.gov.hk/en/redir/pilotSchemeSDU).



## 提醒有關健康排水系統的重要性

## Reminder regarding the Importance of Healthy Drainage System

宇署建議持牌人提醒客戶有關健康排水系統的重要性。為保障公眾衞生及安全,屋宇署於2021年及2022年,委聘顧問公司進行一次性的特別計劃,為全港約二萬幢超過三層高的私人住宅或綜合用途樓宇視察外牆排水系統,並根據《建築物條例》對欠妥的外牆排水系統採取執法行動,向相關單位業主發出命令。常見的渠管問題包括未有妥善接駁反虹吸管及排水管滲漏/破損。屋宇署建議持牌人提醒準買家,為自身利益,在裝修單位時一併聘請合資格承建商糾正/修葺渠管問題,以遵從命令的要求。

為推廣樓宇安全及釐定及施行私人樓宇的安全、衞生和環境標準,屋宇署建議持牌人提醒業主客戶,(i)不應擅自非法改動單位的排水系統;及(ii)如想豎設、改動或拆除其單位的排水系統,可按「小型工程監管制度」的簡化規定,委任合適承建商進行,以確保單位的排水系統符合《建築物條例》及其相關規例的規定。

持牌人可瀏覽屋宇署網頁(www.bd.gov. hk)了解更多相關資訊。 The Buildings Department ("BD") advises licensees to remind their clients of the importance of healthy drainage system. BD has engaged consultancy firms to undertake a one-off special scheme to inspect the external drainage systems of about 20,000 private residential or composite buildings exceeding three storeys in height to protect public health and safety and taken enforcement action against defective drainage system at external wall by issuing orders to relevant premises owners pursuant to the provisions of the Buildings Ordinance ("BO") in 2021 and 2022. Common drainage problems include non-provision of proper anti-syphonage pipe and leaking/defective drainage pipe. BD advises licensees to remind prospective buyers that it is in their own interest to appoint qualified contractor to rectify/repair the drainage defects while renovating the premises in order to comply with the order.

With an aim to promoting building safety and; setting and enforcing the safety, health and environmental standards for private buildings, BD also advises licensees to remind their clients who are building owners that (i) they should not carry out illegal alteration works to the drainage system in their premises; and (ii) if they wish to erect, alter or remove the drainage system in their premises, they may so pursue in accordance with the simplified requirements under the Minor Works Control System by appointing suitable contractor so as to ensure that the drainage system in their premises is in compliance with the provisions of the BO and the relevant regulations.

For further information, please visit BD's website at www.bd.gov.hk





糾正欠妥外牆排水系統簡易 指南

Layman's Guide on Rectifying Defective Drainage System at External Wall





## 土地註冊處「物業把關易」 業主好幫手

## The Land Registry's Property Alert – A Smart tool for property owners



業把關易」是土地註冊處為業主提 供的一項電子提示服務,有助保障 業主的物業權益。就此,土地註冊處希望透 過監管局,誠邀持牌人向業主客戶推介「物 業把關易」服務。

業主訂購「物業把關易」後,在訂購期內, 每當有涉及相關物業的文件交到土地註冊處 註冊,業主便會收到電郵通知書及手機提示 短訊。該服務有助業主盡早發現任何在其預 期之外或可疑的文件遞交註冊(例如在業主 不知情下出售或抵押物業的文件),讓他們 可盡快採取適當行動。

為鼓勵更多業主訂購「物業把關易」,由今年 1月1日起,一次過訂購方式的服務費用已由 \$580下調至\$380,便可享用服務直至物業轉 手。讓業主以更相宜的服務費用,享受「物業 把關易」為其物業帶來的保障。

此外,土地註冊處誠邀持牌人觀看有關「物業 把關易」的電視節目:《港樓●講樓》-「為 物業把關一。該節目提供了清晰的資訊,並建 議業主使用「物業把關易」服務以助提防物業 騙案。請瀏覽土地註冊處網站(www.landreg. gov.hk) 以了解更多有關服務詳情。

The Property Alert launched by the Land Registry ("LR") is an email notification service for property owners to protect their properties' interest. Through the EAA, the LR would like to enlist the help from licensees to recommend the Property Alert service to property owner clients.

By subscribing to Property Alert, property owners will receive an email notification and Short Message Service (SMS) reminder when any instrument is lodged with the LR for registration against their properties. This service enables early detection of any unexpected or suspicious instruments delivered for registration (such as instruments purporting to sell or mortgage their property without their knowledge) so that they can take appropriate and prompt actions.

To encourage more property owners to subscribe to the service, the subscription fee for one-off subscription was revised from \$580 to \$380 with effect from 1 January 2023. Property owners can enjoy the benefit of the service until change of property ownership at a lower fee.

The LR would also like to share with licensees a TV programme titled "《港樓●講樓》-「為物業把關」"which conveys clear messages advising property owners to use the service to guard against property fraud. For more information about the service, please visit the LR's website (www.landreg.gov.hk).





**Property Alert** 





## 差餉物業估價署發出的提醒

## Reminder from the Rating and Valuation Department

動物業估價署(「估價署」)發文建議 持牌人在處理物業轉易時,要提醒客戶 有關繳納差餉及/或地租的責任,以及更新物 業繳納人的資料,以保障買方的利益。

此外,估價署亦介紹「電子差餉地租單服務」, 登記用戶可透過此服務查閱電子差餉地租單並 安排付款,既方便又環保。

持牌人可瀏覽監管局網頁閱覽該文稿(持牌人專區>最新消息及提醒)。如有任何相關查詢,請致電估價署查詢熱線2152 0111。



The Rating and Valuation Department ("RVD") has issued an article to advise licensees to remind their clients of the liabilities in rates and/or Government rent and change the payer's particulars of the properties so as to protect the purchasers' interest while handling property conveyance.

In addition, the RVD also introduces the eRVD Bill service for registered users to retrieve the electronic demand which is convenient and environmentally friendly.

Licensees may read the RVD's article posted at the EAA's website (Licensees Corner > News and Reminders). For any enquiries, please contact the RVD's hotline at 2152 0111.



## 監管局最新通訊方式的安排

## Latest arrangement on means of communications by the EAA

管局於2023年4月24日於本局網頁發出 一則特別公布。監管局會在合適的情況 下以電郵、手機短訊/多媒體訊息、或其他電子方式與持牌人及牌照申請人聯絡,以代替郵 寄。

持牌人應留意,就某些與地產代理執業有關的 資訊,本局只會透過網站發布,並以電子方式 通知持牌人。持牌人應經常瀏覽監管局網站以 取得該些資訊,並熟悉適用於他們的任何規 定。

持牌人請於監管局網頁參閱有關特別公布 (「資訊中心」>「特別公布」>「監管局最 新通訊方式的安排」)了解詳情。 The EAA issued a special notice on the EAA website on 24 April 2023, regarding the communication arrangement with licensees and licence applicants via e-mail, mobile SMS/MMS or other electronic means in lieu of mailing where appropriate.

Licensees are reminded that certain information on matters concerning estate agency practice will only be published on the EAA website and drawn to the attention of licensees by electronic means. Licensees should visit the EAA website regularly to obtain such information and familiarise themselves with any requirement which is applicable to them.

Please read the special notice at the EAA website (Information Centre > Special Notice > Latest arrangement on means of communications by the EAA) for more information.

## 「5A代理」最新動畫短片

## New animation videos on "5A agent"

宣揚專業地產代理應具備的重要特質和提升地產代理的專業形象,監管局推出宣傳計劃,進一步向公眾推廣「5A代理」的概念。監管局最近製作並推出一系列動畫短片,教育消費者在委託地產代理時,應注重哪些重要特質。

一連五集的動畫短片以「識揀一定揀識得『三言兩與』嘅5A地產代理」為主題,涵蓋地產代理為客戶提供專業服務時應具備的各項「5A」特質,包括「言出必行」(Adherence)、「言之有物」(Ability)、「言而有信」(Accountability)、「與時並進」(Advancement)及「與客同行」(Affinity)。

在這系列的動畫短片中,一位動畫化的「5A 代理」會利用簡單而生動的圖像和標語,引導 觀眾了解每種特質的基本特徵。每段短片長約 一分鐘,內容雙語對照,讓消費者能快速明白 「5A」特質。

全部五集動畫短片已上載至監管局的YouTube頻道(www.youtube.com/EstateAgentsAuthority)。歡迎持牌人與客戶分享短片,向他們介紹你也是一位「5A代理」。



「識揀一定揀 識得『三言兩與』嘅5A地產代理」動畫短片介紹專業地產代理應具備的「5A」特質。 "Be a wise consumer, choose a 5A estate agent" animation video series introduce the important "5A" qualities that professional estate agents should possess.



ropromote the important qualities that a professional estate agent should possess and enhance the professional image of estate agents, the EAA has launched a publicity campaign to further promote the concept of the "5A agent" to the public. A series of animation videos was recently produced and launched to educate consumers on the important "5A" qualities that they should focus on when appointing an estate agent.

Themed "Be a wise consumer, choose a 5A estate agent", this series of animation videos consists of five episodes, covering each of the "5A" qualities that estate agents should possess in order to provide professional services to their clients. The "5A" qualities include "Adherence", "Ability", "Accountability", "Advancement" and "Affinity".

In these short animation videos, the animated "5A agent" will guide the audience through the essential traits of each quality with the aid of simple yet vivid graphics and headlines. Each video is about one-minute and bilingual in content so that consumers can understand the "5A" qualities in no time.

All five animation videos have been uploaded to the EAA's YouTube channel (www.youtube.com/EstateAgentsAuthority). Licensees are welcome to share the videos with your clients to show that you are also a "5A agent".



## 持續專業進修活動 一 地產代理業界:認識保障個人資料私隱 CPD webinar on "Protection of Personal Data Privacy for the Estate Agency Sector"

了讓持牌人對新修訂的《個人資料(私隱)條例》內的「起底」罪行、直接促銷的規定,以及對管理個人資料的良好行事方式有更深入的認識,監管局與個人資料私隱專員公署(「私隱專員公署」)於2023年3月27日合辦一個題為「地產代理業界:認識保障個人資料私隱」的網上講座。

席間,個人資料私隱專員鍾麗玲女士擔任講者,聯同私隱專員公署高級個人資料主任(投訴)胡慧雅女士以及監管局投訴部經理莊小珮女士,分別向持牌人介紹《2021年個人資料(私隱)(修訂)條例》中有關「起底」罪行的重點及直接促銷的規定,分享了涉及地產代理業界的相關個案,以及地產代理從業員的個人資料管理良好行事方式,並由監管局行政總裁韓婉萍女士致歡迎辭。是次講座吸引了超過300 位參加者參加。

為協助持牌人了解及遵從《個人資料(私隱)條例》的規定,監管局亦推出了相關的網上學習活動。詳情請瀏覽監管局網頁:http://www.eaa.org.hk/zh-hk/CPD-Scheme/e-Learning-programmes



To equip licensees with a better understanding of the newly amended Personal Data (Privacy) Ordinance in relation to "doxxing offences", the regulations on direct marketing and good practices in managing personal data, the EAA and the Office of the Privacy Commissioner for Personal Data ("PCPD") co-organised a webinar on "Protection of Personal Data Privacy for the Estate Agency Sector" on 27 March 2023.

During the webinar, the Privacy Commissioner for Personal Data, Ms Ada CHUNG Lai-ling, as the keynote speaker, together with the Senior Personal Data Officer (Complaints) of the PCPD, Ms Terri WU, and the Manager (Complaints) of the EAA, Ms Christine CHONG, explained to the licensees the doxxing offences and the direct marketing regime under the Personal Data (Privacy) (Amendment) Ordinance 2021, as well as shared the data privacy related cases involving the estate agency sector and good practices of personal data management, following the opening remarks by Ms Ruby HON, Chief Executive Officer of the EAA. The webinar attracted over 300 participants.

In order to assist licensees in understanding and complying with the requirements of the Personal Data (Privacy) Ordinance, the EAA has launched an e-Learning programme on this topic. For details, please visit the EAA website (www.eaa.org.hk/en-us/CPD-Scheme/e-Learning-programmes).

## 緊記「三言兩與」一「與時並進」

## Always be a "5A" agent – "A" for "Advancement"

一管局於2019年推出「5A」代理宣傳計 一一劃,推廣專業地產代理應具備的「三 言兩與」特質,提醒消費者委託具備該等特質的地產代理。自計劃推出以來,具代表性 的「5A」代理廣受業界歡迎。

監管局會於《專業天地》中,提醒持牌人如何成為消費者尋求的「5A」代理。在今期的《專業天地》中,我們會談談「三言兩與」中的「與時並進」,亦即是英文「5A」代理中的第四個特質(Advancement)。

「與時並進」除了代表地產代理應掌握政府 規例及地產市場的最新發展外,也代表地產 代理應跟隨時代步伐,好好裝備自己。隨着 消費者的期望日漸提高,從業員必須不斷自 我增值,以滿足客戶的要求。

監管局提供的「持續專業進修計劃」活動為 持牌人提供不少選擇,而為了為持牌人提供 了更大的靈活性,監管局已將「網絡研討會/ 網上培訓課程」納入為「持續專業進修計 劃」的活動模式,讓持牌人可隨時隨地學習。

為鼓勵從業員自我提升,監管局不斷優化持續專業進修計劃,並提供不同的鼓勵和嘉許措施。例如,若持牌人連續在三個及五個進修時段達到嘉許學分要求,將可獲頒發優越嘉許獎章(銀/金章)。

The EAA launched the publicity campaign of the "5A" agent in 2019 to promote the important "5A" qualities that a professional licensed estate agent should possess, and which consumers should focus on when appointing an estate agent. The iconic "5A" agent has gained popularity among the trade since then.

Here in *Horizons*, we will remind licensees how to become this "5A" agent whom every consumer will look for. In this issue, we will talk about the fourth "A-level" attribute – "Advancement".

Advancement is about keeping abreast of the latest trends and developments of any laws, government regulations, essential facts and developments in the real estate market. Estate agents should be well equipped to advance with the times. With the increasing expectations of consumers, practitioners must advance themselves to meet the requirements of their clients.

The Continuing Professional Development ("CPD") activities conducted by the EAA offer a lot of choices for licensees to advance their knowledge and skills. To provide more flexibility for licensees to participate in CPD activities, the EAA has also included "Webinar/Online Training Class" as a learning mode under the CPD Scheme, so that licensees can learn anywhere and at any time.

The EAA keeps optimising the CPD Scheme and encourages practitioners to strive for self-advancement. There are various incentives and recognition initiatives for licensees who make an effort. For example, a premium CPD Symbol (silver/gold) will be presented to those licensees who have respectively achieved the CPD attainment target for three consecutive CPD periods and five consecutive CPD periods.

持牌人應經常保持「與時並進」。尤其是在行內沒有 太多經驗的新入行人 士,更加應參加多 些培訓,除了涉 及實務和技能的 範疇之外,最重 要是加深對監管

局規例的認識。

Licensees should always keep up their "Advancement". In particular, new entrants who have limited experience in the estate agency industry are strongly encouraged to take more training, not only about the practice and the skills necessary, but most importantly about the regulations of the EAA.



#### 紀律研訊個案 Disciplinary hearing case

## 在社交平台上披露客戶的個人資料 Disclosing a client's personal data on social media

#### 引言

持牌人應遵守《個人資料(私隱)條例》以 及由監管局發出有關收集、使用和處理個人 資料的指引。否則,有可能被監管局紀律處 分。

#### Introduction

Licensees should comply with the Personal Data (Privacy) Ordinance and the relevant guidelines issued by the EAA in respect of the collection, use and handling of personal data. Otherwise, they may be subject to disciplinary action by the EAA.

#### 事件經過

#### **Incident**

A salesperson obtained personal data from a tenant, including her ID number and a copy of her staff card, as proof of employment to provide to the landlord. The tenancy term was for two years but after a few months the tenant requested an early termination which was rejected by the landlord. After the rejection the tenant stopped paying rent. Being authorised by the landlord to handle the tenancy matter, the salesperson decided to post on a social media platform the tenant's name, mobile number, ID number and a copy of her staff card with partial details redacted. The tenant discovered the post and lodged a complaint with the Office of the Privacy Commissioner for Personal Data ("PCPD") and the EAA. During the EAA investigation, the salesperson admitted that he had uploaded the post to pressure the tenant into paying rent on behalf of the landlord. A PCPD investigation also found that the behaviour of the salesperson contravened the Data Protection Principle 3 in Schedule 1 of the Personal Data (Privacy) Ordinance.

#### 研訊結果

監管局紀律委員會認為該營業員沒有遵守監管局發出的執業通告(編號13-05(CR)),在沒有取得租客的同意下,在社交平台上披露租客的個人資料。因此,該營業員違反了監管局發出的《操守守則》第3.2.1段:「地產代理和營業員應熟悉並必須在執業時遵守《地產代理條例》、其附屬法例、本操守守則,以及由監管局不時發布的所有其他指引。」

考慮到個案的性質及該營業員的違規紀錄,委員會決定譴責他,罰款共12,000港元,暫時吊銷其牌照一個月,並要求他在12個月內取得持續進修計劃下的12個學分。

#### Result

The EAA Disciplinary Committee was of the view that the salesperson failed to comply with the Practice Circular (No. 13-05(CR)) issued by the EAA, disclosing the personal data of the tenant on social media without obtaining her consent. Hence, the salesperson was in breach of paragraph 3.2.1 of the Code of Ethics, which states that, "Estate agents and salespersons should be fully conversant with the EAO, its subsidiary legislation, this Code of Ethics, and other guidelines issued by the EAA from time to time and shall observe and comply with them in the course of their practice."

Having considered the nature and gravity of the case, as well as the disciplinary record of the salesperson, the disciplinary committee decided to reprimand him, impose a fine of HK\$12,000, suspend his licence for one month and required him to obtain 12 points under the CPD Scheme in 12 months.



廖志明先生 香港新界地產代理商聯會永遠榮譽主席 **Mr Liu Chi-ming** Life-long President H.K.N.T. Estate Agents & Merchants Association

#### ● 業界意見 Comment from trade

地產代理應該尊重客戶的私隱,在處理客戶個人資料時要小心,不可利 用客戶的個人資料作其他用途,更不應在網上發布客戶的個人資料。損 害客戶的私隱是非常嚴重的違規行為,業界應引以為戒。即使租客與業 主發生租務糾紛,身為代理亦不應用違法的手段代表業主追討租金

Estate agents must respect clients' privacy and exercise care when handling clients' personal data. They must not use their clients' personal data for other purposes or post their clients' personal data online. Infringing upon client's privacy is a serious non-compliance and every practitioner should be vigilant against such behaviour. Even in the case of a tenancy dispute between the tenant and landlord, estate agents must not use any illegal means to recover the rent for the landlord.

#### 紀律研訊個案 Disciplinary hearing case

## 發布虛假或具誤導性的網上物業廣告 Issuing a false or misleading online advertisement

#### 引言

地產代理公司切勿發布含有虛假或誤導性陳 述或詳情的物業廣告,亦不得在未獲准許便 擅自使用屬於其他人士或公司的相片作廣告 宣傳。否則,有可能被監管局紀律處分。

#### **Introduction**

Estate agency companies must not include any false or misleading statements or particulars in property advertisements and must not use photos belonging to other people or company without permission. Otherwise, they may be subject to disciplinary action by the EAA.

#### 事件經過

監管局接獲地產代理公司A的投訴,稱在未獲得其許可的情況下,被地產代理公司B擅自取用了其物業廣告的相片。監管局調查發現,B公司未能提供相關的「出售香港住宅物業用的地產代理協議」(表格三)及相關廣告所載物業的詳細地址。B公司在發布有關物業廣告前未獲得物業擁有人的委託及書面同意。此外,物業廣告上的相片亦證實屬於A公司,B公司於未得到A公司同意下便刊登了有關相片。

#### 研訊結果

地產代理公司B擅自取用了未獲准使用的相 片發布物業廣告,此行為可能被視為盜取其 他地產代理公司的知識產權。因此,監管局紀 律委員會認為B公司違反了監管局發出的《操 守守則》第3.7.2段:「地產代理和營業員應避 免做出可能令地產代理行業信譽及/或名聲 受損的行為。」

此外,該物業廣告令人認為地產代理公司B已獲得該物業擁有人的委託代為出售物業,惟事實並非如此。因此,B公司發布了一則載有虛假或具誤導性的陳述或詳情的廣告,違反了《地產代理常規(一般責任及香港住宅物業)規例》第9(1)條。

考慮到個案的性質及該營業員的違規紀錄, 委員會決定譴責B公司,並罰款合共94,000 港元。

#### **Incident**

The EAA received a complaint from estate agency company A that the photos of one of its residential property advertisements were misappropriated by estate agency company B. During the EAA's investigation, company B failed to provide the Estate Agency Agreement for Sale of Residential Properties in Hong Kong (Form 3) and the detailed address of the advertised property. Company B did not obtain the instruction and written consent from the vendor before issuing the advertisement. Additionally, it was proved that the photos in the advertisement belonged to company A and were published without the consent of company A.

#### Result

Estate agency company B had issued an advertisement using photos that it had no permission to use, which could be considered as an infringement of intellectual property rights of another estate agency company. Hence, the EAA Disciplinary Committee was of the view that company B was in breach of paragraph 3.7.2 of the Code of Ethics, which states that, "Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade."

In addition, the concerned advertisement could also mislead consumers into believing company B was appointed by the vendor to list the property for sale, which was not true. Hence, company B issued an advertisement which included a statement or particular that was false or misleading in a material particular and thus was in breach of section 9(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.

Having considered the nature and gravity of the case, as well as the disciplinary record of company B, the disciplinary committee decided to reprimand the company and impose a fine of HK\$94,000 in total.



黃健基先生 香港地產代理商總會秘書長 **Mr Andy Wong** Chief Secretary of Hong Kong Real Estate Agencies General Association

#### 業界意見 Comment from trade

地產代理公司在未經同意下使用其他公司的相片發布物業廣告,不但影響同業,亦令地產代理的專業形象受損。此外,該公司事實上沒有受到物業擁有人的委託,而是利用他人的相片發布虛假廣告,此舉會令公眾對地產代理失去信心,令行業信譽受損。

Using photos from another estate agents company to issue property advertisements without permission not only harms the other company but also tarnishes the professional image of the estate agency industry. Besides, the company was not even appointed by the property owner but issued a false advertisement by using photos belonging to another company. This act can lead to a loss of public trust and bring discredit to the trade.



2022年打擊洗錢及恐怖分子資金籌集 (修訂)條例》(「《修訂條例》」) 已於2023年6月1日生效。為協助持牌人遵從 《修訂條例》中與地產代理業有關的雜項修 訂(「雜項修訂」)及提供最新的指引予業 界遵從,監管局已發出一份新的執業通告(編號23-01(CR)),並已於同日生效。

《修訂條例》內的雜項修訂包括:(i)按照財務行動特別組織的要求修訂「政治人物」一詞的定義,並容許在處理不再擔任重要公職的前政治人物時有較大的彈性;(ii)修訂《打擊洗錢及恐怖分子資金籌集條例》下有關信託「實益擁有人」的定義,使之與《稅務條例》下「控權人」的定義一致,並訂明就信託而言,「實益擁有人」包括受託人、受益人類別等;以及(iii)在客戶不在場的情況下,容許以數碼識別系統協助進行客戶盡職審查,以識別和核實客戶的身分等。

整份執業通告及一套詳細的「問與答」,以及經更新的清單及身分核實表格已上載至監管局網站,以供業界參考。監管局建議持牌人瀏覽監管局網站以獲得更多相關資訊(規管>執業通告)。

The Anti-Money Laundering ("AML") and Counter-Terrorist Financing ("CTF") (Amendment) Ordinance 2022 ("Amended AMLO") has taken effect on 1 June 2023. To assist licensees to comply with the miscellaneous amendments relevant to the estate agency sector ("Miscellaneous Amendments") under the Amended AMLO and provide up-to-date guidelines for licensees to follow, the EAA has issued a new Practice Circular (No. 23-01(CR)) which has also taken effect on the same date.

The Miscellaneous Amendments under the Amended AMLO include: (i) amending the definition of "politically exposed person" ("PEP") in accordance with the Financial Action Task Force requirement and allowing more flexibility in the treatment of former PEPs who are no longer entrusted with a prominent public function; (ii) aligning the definition of "beneficial owner" in relation to a trust under the AML and CTF Ordinance with that of "controlling person" under the Inland Revenue Ordinance, by clarifying that, where a trust is concerned, a beneficial owner includes a trustee, a beneficiary and a class of beneficiaries, etc.; and (iii) allowing the engagement of digital identification systems to assist the conduct of customer due diligence in situations where a customer is not physically present for customer identification and verification purposes, etc.

The full set of the new Practice circular, a set of detailed "Questions and Answers" and an updated checklist and identity verification forms have already been posted on the EAA's website. Licensees are advised to check the EAA's website for more information (Compliance > Practice Circular).

在《專業天地》內,我們會解答持牌人的一些常見提問。 In *Horizons*, we will answer questions commonly asked by licensees.

- 如果客戶委託了某地產代理公司為獨家代理推銷其住宅物業,但最後該客戶將物業直接售予其鄰居,該客戶是否須要繳付佣金給該地產代理公司?
- 根據出售香港住宅物業用的「地產代理協議」(表格3)或俗稱「放盤紙」的附表4,賣方如委託了一家地產代理公司為獨家代理,但在委託期內經另一家地產代理公司出售有關物業,他的獨家代理有權向賣方追討佣金。

然而,如果客戶直接將其物業售予他 人,而非經該獨家代理或其他地產代理 公司,他並不須要為此繳付佣金予該獨 家代理。

- If an estate agent is appointed as an exclusive estate agent to sell a client's property, but the client eventually sells the property to his neighbour direct, does the client need to pay commission to the estate agency?
- As stipulated in Schedule 4 of the Estate Agency Agreement for Sale of Residential Properties in Hong Kong (Form 3), if the vendor has appointed an estate agent as his exclusive agent, but sells the property through another estate agency during the validity period, his exclusive agent has a right to claim commission from him.

However, if the client sells the property to the purchaser direct instead of the exclusive agent or another estate agent, he does not need to pay commission to the exclusive agent.



### 監管局即將推出的持續專業進修計劃活動 Upcoming CPD activities offered by EAA

詳情請瀏覽《持續專業進修 計劃》的網頁:

Please visit the webpage of the CPD Scheme for details:



### 講座

日期 (月/年) Date (Month/Year)	課程名稱 Course title	學分 CPD Points	語言 Language	類別 Category
7/2023	物業處置的税務案例分享	1.5		合規及有效 管理
	設施管理科技的新發展趨勢	2 廣東		全面提升發展
8/2023	香港樓宇建築及預售樓花的規限, 以及對買家的保障		廣東話	合規及有效管理
	認識綠色建築與理解售樓書上的 強制性綠建資訊			
9/2023	自製長糧至安心	1.5		<b>公</b> 而担 1 2 2 层
	認識買賣農地	2		全面提升發展

### 網絡研討會

日期 (月/年) Date (Month/Year)	課程名稱 Course title	學分 CPD Points	語言 Language	類別 Category
7/2023	地產代理業防貪講座 (前線代理)	1.5	英語	
	打擊清洗黑錢及恐怖分子資金籌集 講座(指定非金融企業及行業)	1.75	廣東話	合規及有效 管理
	認識綠色建築與理解售樓書上的 強制性綠建資訊	2	英語	
8/2023	業主對樓宇維修及消防安全的責任	1.5	廣東話	全面提升 發展
	種族平等與地產代理工作	2	英語	合規及有效 管理

### 其他活動

<b>**</b> TV	事務委		جلج حد	工工
- <del> </del>	生形型		T	
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《競爭條例》網上講座

日期	時間	語言	課程費用
19/7/2023	15:30-17:30	廣東話	免費

請瀏覽競爭事務委員會網頁了解詳情 及報名。

查詢電郵:event@compcomm.hk

查詢電話: 3462 2118

#### 31-3-2023

15位來自地產代理業界的義工參與由監管局和基督教勵行會 合辦的「童樂有『理』 — 地產代理兒童服務日 | 。

Fifteen volunteers from the estate agency trade participate in the "Estate Agents' Children Service Day" organised by the EAA and Christian Action.



#### 21-3-2023



監管局與業界主要代表舉行聯絡會議,會上討論 多個議題,包括《業主與租客(綜合)條例》第 IVA部下有關分間單位的租務管制、反洗錢的最新 消息及常見違規問題。

The EAA holds a liaison meeting with major trade representatives to discuss various issues, including the tenancy control regime for subdivided units under Part IVA of the Landlord and Tenant (Consolidation) Ordinance, updates on anti-money laundering and common non-compliance.

#### 18-3-2023

監管局舉行「境外樓花勿亂買 投資風險你要知」網 上講座,右起:主持崔潔彤女士、嘉賓講者安泓投資 有限公司投資總監及香港大學房地產及建設系客席副 教授楊書健先生、國眾聯測量師行顧問及香港測量師 學會前會長余錦雄測量師,以及監管局執行總監陳汝 做律師。

The EAA holds an online public seminar titled "Be vigilant to the risks before purchasing off-plan properties outside Hong Kong". From the right: the host of the seminar Ms Kity CHOI, guest speakers Mr Victor YEUNG Shu-kin, Chief Investment Officer of Admiral Investment Limited and the Adjunct Associate Professor of the Department of Real



Estate and Construction at the University of Hong Kong; Sr YU Kam-hung, Consultant of PSA(HK) Surveyors Limited and the Past President of the Hong Kong Institute of Surveyors; and Mr CHAN U-keng, Director of Operations of the EAA.

### 11/2015

來自監管局的員工及其親友義工,參加了由「母親的抉擇」舉辦的家庭慈善步行籌款日。

Volunteers from the EAA staff, their families and friends participate in the "Walkathon 2015", a fundraising activity organised by Mother's Choice.



## *3/2013*

廣東省房地產行業協會代表團到訪監管局。

The EAA receives a delegation from the Guangdong Real Estate Association.

### 3/2011

監管局於九龍灣、荃灣及旺角東港鐵站舉辦巡 迴展覽,以提升公眾對於監管局的認識及加強 公眾教育。

The EAA organises roving exhibitions at MTR stations at Kowloon Bay, Tsuen Wan and Mongkok East to raise public awareness of the role of the EAA and enhance consumer education.



#### 考試 Examination

營業員資格考試(電腦應考模式) Salespersons Qualifying Examination (Computer-based)



參加人數 No. of candidates

合格率 Pass rate

考試日期 Examination date 05/2023

168

**17%** 

營業員資格考試(筆試應考模式) Salespersons Qualifying Examination (Paper-based)



參加人數 No. of candidates

合格率 Pass rate

考試日期 Examination date 03/2023

678

32%

地產代理資格考試(筆試應考模式) Estate Agents Qualifying Examination (Paper-based)



參加人數 No. of candidates

合格率 Pass rate

考試日期 Examination date 05/2023

827

17%

## 牌照數目 (截至2023年5月31日)

Number of licences (As at 31/5/2023)

營業員牌照 Salesperson's Licence



22,144

地產代理(個人)牌照 Estate Agent's Licence (Individual)



18,819

個人牌照總和 Total no. of Individual Licences



40,963

地產代理(公司)牌照 Estate Agent's Licence (Company)



3,969

營業詳情説明書 (截至2023年5月31日)

Number of statements of particulars of business (As at 31/5/2023)

合夥經營 Partnerships



163

獨資經營

Sole proprietorships



1,491

有限公司

Limited companies



5,405

總數 Total



7,059

開立的投訴個案宗數 (2023年1月至5月)

Number of complaint cases opened

(January to May 2023)

57



已處理的投訴個案結果\*(2023年1月至5月)
Results of completed complaint

Cases\* (January to May 2023)

指稱成立

Substantiated

其他(例如投訴人撤回投訴或因其他原因而終止調查)

Others (include cases withdrawn or closed because of other reasons)

資料不足 Insufficient information to pursue 18 59 15 總數Total 129 37

指稱不成立 Unsubstantiated

\* 部分是往年接獲的個案 Some cases were carried over from previous years

#### 巡查次數 (2023年1月至5月)

Number of compliance inspections (January to May 2023)



巡查發現主動調查的個案 (2023年1月至5月)
Number of cases arising from self-initiated investigations during inspections (January to May 2023)

主動調查的個案 Cases arising from self-initiated investigations

42

主動調查而指稱成立的個案\* Cases completed from self-initiated investigations and were substantiated\*

53

\* 部分是往年展開調查的個案 Some cases were carried over from previous years



向持牌人或前持牌人採取的行動\* (2023年1月至5月)

Actions taken against licensees or ex-licensees\* (January to May 2023)

有關的持牌人或前持牌人人數 No of licensees or ex-licensees



148

#### 行動 Actions Taken



訓誡/譴責

Admonishment/ reprimand

101

罰款 Fine

84

於牌照附加/更改條件 Attachment/ alteration of conditions to licence

69

暫時吊銷牌照 Suspension

8

撤銷牌照 Revocation

13#

- \* 以上行動是根據《地產代理條例》所賦予的權力而採取的。當中部分行動屬紀律性質,其他則是由牌照委員會裁定的,包括在批出牌照時在牌照上附加條件。部分是往年接獲的個案。
  - These actions were taken pursuant to powers under the Estate Agents Ordinance. Some actions were disciplinary in nature whereas others were decided by the Licensing Committee which actions included the attachment of conditions to licences upon issuance. Some cases were carried over from previous years.
- # 這些個案由牌照委員會裁定。理由是持牌人不再符合相關發牌條件。
  These cases were decided by the Licensing Committee on the ground that the licensees concerned no longer met the relevant licensing requirements.













